

7 Official Opinions of the Compliance Board 15 (2010)

**Open Session Requirements – Public body’s discussion of
Legislative or Quasi-legislative matters without notice to public
violated Act**

Minutes – Failure to prepare violated Act

February 16, 2010

Russell P. Butler
Executive Director
Maryland Crime Victims’ Resource Center, Inc.

The Open Meetings Compliance Board has considered your complaint alleging that the Criminal Injuries Compensation Board (“CICB”) may have violated the Open Meetings Act in connection at least two proposed policy changes. For the reasons explained below, we find that the CICB violated the Open Meetings Act during 2008 when it met to discuss proposed regulatory changes and when it met at some point to consider a policy concerning government issued identification without regard to the Open Meetings Act’s requirements.

I

Complaint and Response; Supplemental Response

According to the complaint, the Maryland Crime Victims’ Resource Center, Inc. believes that the CICB violated the notice provisions, open meetings requirement, and requirements for minutes under the Open Meetings Act in the manner that at least two policy matters were addressed. The policy matters involved the Board’s decision to propose changes in its regulations, in advance of publication and opportunity for public comment,¹ and a proposal that claimants be required to provide a copy of government issued identification. The complaint also noted a decision reflected in a memorandum from the CICB’s Executive Director to victim service providers to postpone the latter policy “pending comments.”

In a timely response on behalf of the CICB, Assistant Attorney General Steven Hildenbrand reviewed the manner by which the regulatory changes

¹ The proposed changes to the CICB regulations were subsequently published in 36:13 *Maryland Register* 934 (June 19, 2009).

were proposed and stated that a notice of final action has not been published in the *Maryland Register*.² The response stated that, prior to publication of the proposed regulations, the CICB's Executive Director, Robin Woolford, met informally in his office with the five Board members, at which time there was a discussion "concerning the CICB's desire to amend [COMAR 12.01.01.04, .06, and .08] and oral agreement by the Board members for Mr. Woolford to have the amendments drafted and submitted to the Office of the Secretary for publication." While no minutes or other records were kept, the CICB believes the discussion occurred some time during 2008.

The CICB acknowledged that it is a public body as defined under the Open Meetings Act and that it is subject to the Act when it engages in a quasi-legislative function. The response also acknowledged that "the decision to amend the three COMAR regulations occurred without advance notice of an open meeting ... and no meeting minutes were made or kept..." The Board indicated that it will not take final action to adopt the regulations and will only proceed with further consideration of the proposed regulations after conducting a public hearing and only after compliance with the Open Meetings Act.

As to the proposed policy that would require a claimant to submit a copy of a government-issued identification, the response stated that the CICB "has delayed implementing that policy pending receipt of comments from crime victims service providers and further review and consideration ... in accordance with all applicable law and procedure." The response referenced the October 19, 2009, memo that was attached to the complaint.

Before our review of this matter, we requested that the CICB clarify whether a quorum of the body had met in connection with the policy to require a government-issued identification or the postponement of that policy. In response, Assistant Attorney General Hildenbrand acknowledged that the CICB's executive director met informally with a quorum of the five-member board before announcement of the policy to require a photo copy of a government issued identification and it was during that meeting that the decision was made. According to the response, "[t]he meeting was not conducted as a public meeting and there was no prior public notice of the meeting. No minutes were kept concerning that decision." However, the decision to postpone the policy was made by the executive director and it did not involve a quorum of the CICB. The response reiterated that, "CICB will not further review or consider that proposed policy without complying with all applicable law and procedure."

² The Compliance Board had granted the CICB an extension of time to submit a response.

II

Analysis

Given the CICB's acknowledgments, a detailed analysis is not required. When a public body meets and discusses a matter that constitutes a legislative or quasi-legislative function as defined in the Open Meetings Act, such as proposed changes in its regulations or other policy proposal, it is subject to the Act. §10-502(f) and (j).³ Unless the meeting is closed in accordance with provisions of the Act, the public has a right to attend. §§10-505 and 10-507(a). Reasonable notice must be given in advance of the meeting. §10-506. Absent advance notice, it cannot be said that a meeting is in reality an "open" meeting since the public would not be aware that a meeting was to occur. 6 *OMCB Opinions* 47, 49 (2008). And minutes of the meeting must be produced in accordance with §10-509.

Based on the CICB's acknowledgments, we find that the Board violated the Open Meetings Act when it discussed the regulatory changes in the office of the executive director in 2008 and when it discussed at some point the policy to require that claimants' provide a copy of a government issued identification. The decision to delay implementation of the latter policy, however, did not involve a quorum of the CICB, thus, it was not governed by the Open Meetings Act.

III

Conclusion

We find that the CICB violated the Open Meetings Act when the Board met during 2008 when it proposed regulatory changes and when it met at some point to consider a policy concerning government issued identification. Given the CICB's assurances, we trust any future actions in regard to these matters will be handled in accordance with the Act's provisions.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire

³ All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.